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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,485	11/14/2003	Kevin L. Tally	10628.00087	1038
22908	7590	08/25/2004	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				HAN, JASON
ART UNIT		PAPER NUMBER		
		2875		

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

10/1

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/714,485	TALLY, KEVIN L.
	<b>Examiner</b>	<b>Art Unit</b>
	Jason M Han	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 16A (prongs) and 28B (longitudinal slot). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Paragraph 10 in the Summary of the Invention fails to be addressed in the following descriptions.

Appropriate correction is required.

3. The disclosure is objected to because of the following informalities: Paragraph 44 in the Description of the Preferred Embodiment should make reference to Figure 12.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye et al. (U.S. Patent Number 3737650) in view of Galli (U.S. Patent Number 6523973).

With regards to Claim 1, Kaye discloses a flashlight comprising of a molded plastic housing [Figure 1: (12)] having a top end [Figure 1: (12A)], a bottom light emitting end [Figure 1: (12B)], a longitudinal, centerline axis extending from said top end to said bottom end [Figure 1], and whereby a elongate hollow tube section is formed. Kaye further discloses a circuit assembly wherein a battery source [Figure 1: (14), (16)] within the housing is in electrical communication [Figure 1: (16-1), (18B)] from one pole to said lighting element, a pocket clip member [Figure 1: (20)] is attached to the housing and electrically connected to another pole in the battery source [Figure 1: (20C), (20D)], and whereby said clip member is also connectable to a second circuit conductor [Figure 1: (30-1)] that is electrically connected to the bulb by projecting through an aligned passage [Figure 1: (12A-1)] in said housing and completing said circuit with the battery. The pocket clip is of an elastic, conductive material and is normally disengaged from said second circuit conductor, unless properly utilized by a user [Column 2, Line 53 – Column 4, Line 13].

Kaye does not disclose an embodiment wherein the battery compartment is disc shaped and located opposite of said light emitting end of said elongate hollow tube.

Galli discloses a molded plastic housing [Figures 2: (12); Column 3, Lines 1-4] comprising of a top end [Figure 2: (27)], a bottom light emitting end [Figure 2: (38)], a longitudinal, centerline axis extending from said top end to said bottom end [Figure 2: note top cover (20) with longitudinal, centerline groove], and a disc battery chamber section [Figure 2: (52), (54), (56)] having a centerline axis forming an angle with said centerline axis extending from top to bottom of said housing. The circuit assembly of Galli discloses batteries [Figure 8: (16), (18)] in series whereby an electrical connection is formed by one electrical contact [Figure 8: (44)] of an LED lamp with one pole of said battery source [Figure 8: (58)], and another connection, dependent upon an applied force of a user onto a second circuit conductor [Figure 8: (22)], formed by a second contact [Figure 8: (42), (48)] of said LED lamp with said second circuit conductor and further with the other pole [Figure 8: (76)] of said battery source [Column 3, Line 1 – Column 4, Line 40].

It would have been obvious to modify Kaye's flashlight embodiment to incorporate the disc shaped battery compartment of Galli. Both references are functionally equivalent in activation of a light element, and only differ with respect to the battery type used. In addition, the current application makes note of a lamp capable of directing light into a restricted area or space, which is commonly associated and needed by a mechanic attempting to repair a vehicle. It would have been obvious to one skilled in the art to provide a portable and accessible light, whereby a mechanic is equipped

with an extension of said light to illumine darkly constricted areas, and further allowing the mechanic to activate said light within his/her mouth as commonly seen for a mechanic concurrently using both hands. Given this backdrop, it is determined that the current application would have been obvious at the time of invention.

6. With regards to Claim 4, Galli discloses a gallium LED that emits a soft blue wavelength of light [Column 3, Lines 23-31]. It is also inherent that an LED would fall into one of infrared, ultraviolet, or white light LED categories.

7. With regards to Claim 5, Galli discloses a conductive spring member for connection to a battery in a chamber section [Figure 11: (102)].

8. With regards to Claim 6, Galli discloses a bipolar disc battery having an electrical connection with said lamp [Figure 2: (44) and (16)].

9. With regards to Claim 7, Galli discloses a plurality of disc shaped batteries in series [Figure 2, (16) and (18)].

10. With regards to Claim 8, Kaye discloses a conductive plate [Figure 1, (30-1)] within a tube.

11. With regards to Claim 9, Kaye discloses a pocket clip member [Figure 1: (20)] that is attached to the chamber section [Figure 1: (26-1), (26-3), (26-3)] and includes at least one contact connected to the battery [Figure 1: (20C), (20D)].

12. With regards to Claim 10, Kaye [Figures 7-9] teaches a housing comprising of first and second mirror image sections.

13. With regards to Claim 11, a typical coin battery diameter may have the size of ~0.8 inches. Assuming the battery chamber is of relatively similar size (~1.5 inches). It

would have been obvious to construct the flashlight of Kaye in view of Galli to have a cylindrical tube with length of at least 3 times that size, which is ~4.5 inches. Anything smaller would not be in the scope of the invention, wherein an adequate extension of a light is needed to illumine darkly constricted areas.

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye et al. in view of Galli as applied to Claim 1 above, and further in view of Saitoh et al. (U.S. Patent Number 4223521).

Kaye in view of Galli disclose a LED flashlight construction described above in Paragraph 5.

Kaye in view of Galli does not disclose a battery replacement section found at an end of said chamber section.

Saitoh discloses a wristwatch movement comprising of a back cover with a battery replacement hole [see Abstract and Claims 1, 4].

It would have been obvious to modify the LED flashlight construction of Kaye in view of Galli to further incorporate a battery replacement hole as taught by Saitoh, providing for easy access and quick replacement of a battery.

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye et al. in view of Galli as applied to Claim 1 above, and further in view of Cooper et al. (Publication Number US 2003/0142489).

Kaye in view of Galli disclose a LED flashlight construction described above in Paragraph 5.

Kaye in view of Galli does not specifically disclose a diameter of said tube in the range of 1/8 to 3/8 inch.

Cooper discloses an inspection lamp incorporating an LED [Figure 1: (16)] of 0.38 inches in diameter [Page 2, Paragraph 13], whereby it is connected to a cylindrical tube of similar but larger diameter [Figure 1: (20)].

It would have been obvious to construct the LED flashlight construction of Kaye in view of Galli to have a similar diameter for said cylindrical tube of Cooper, so as to ensure the LED is stably position and encompassed within said tube.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to the current application:

U.S. Patent No. 5158356 to Guthrie;

U.S. Patent No. 5791766 to Lee;

U.S. Patent No. 6299323 to Yu et al.;

U.S. Patent No. 6502587 to Kellum et al.;

U.S. Publication No. 2003/0137833 to Hsu.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH



JOHN ANTHONY WABI  
PRIMARY EXAMINER